

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4973 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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AMBICA FLOUR MILLING CORPORATION

Versus

FOOD CORPORATION OF INDIA  
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Appearance:

MR SM THAKKAR for Petitioner

MR DM THAKKAR for Respondent No. 1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/03/97

ORAL JUDGMENT

The petitioner, a partnership firm at Ahmedabad, filed this Special Civil Application and prayed therein to issue a writ of or a writ in the nature of Mandamus and/or any other appropriate writ, order or direction directing the respondents to correctly and legally implement the Circular at Annexure `B' hereto and to make payment of the outstanding claims of the petitioner in accordance with the provisions of the said Annexure `B'

as set out in Annexure 'C' together with interest at 15% per annum on such outstanding amount.

2. The facts of the case in brief are to be taken to appreciate the controversy which has been raised by petitioner in this Special Civil Application:

The petitioner is engaged in the business of running a roller flour mill which grinds wheat into various food products such as 'Atta', 'Meda', 'Suji', 'Bran' etc. The raw material is wheat for all these products. This wheat is allotted to the petitioner on quota basis and it obtains wheat from the 1st respondent, the Food Corporation of India at its depot. The products and by-products of wheat are treated as essential commodity under the provisions of the Essential Commodities Act, and therefore their production, supply and distribution is regulated by the said Act. The 1st respondent has a number of depots located at different places from which it gives delivery to different roller flour mills including the petitioner. The concerned roller flour mill has to inform the respondent No.1 as to from which of its depots, the mill desires to take supply of the quota of wheat. In case such supplies are available from the depots as indicated by the mill, it is given supply from that depot. However, where supply cannot be made from the depot indicated by the mill, the said mill is required to take supplies from the depot designated by the 1st respondent at its discretion irrespective of the distance involved. The Government of India intended to give some relief by providing reimbursement of transportation and forwarding expenses on a notional basis in cases where the supplies were taken from the depots of respondent No.1 which are located at more than 14 kms. from the destination rail-head and which has a despatch rail-head nearby. The petitioner's factory is located outside Prem Darwaja, Ahmedabad and what the petitioner contended was that though it has informed the 1st respondent that they desire to take supply of quota of wheat from Sabarmati (Kaligam), the petitioner was required to take supply of wheat quota at the instance of 1st respondent, from its depot at Adalaj and Tragad. Both these depots at Adalaj and Tragad of respondent No.1 are more than 14 kms. away from the destination rail-head of the petitioner, that is to say, Adalaj and Tragad are more than 14 kms. away from Kankaria Broad Gauge and Asarwa Meter Gauge, and as such, the petitioner contended that it is entitled to reimbursement of transport expenses from respondent No.1 in accordance with various Circulars issued from time to time. Reference in this respect has been made to two Circulars of Government of India dated 26th May 1975 and

11th December 1979. Adalaj is not a rail-head since there is no loading and unloading facility available. The nearest rail-head to Adalaj is Khodiyar where such facilities are available. The disputed period is from May 1978 to October 1980 from Adalaj depot and for the month of February 1980 for Tragad depot. The petitioner lodged its claim regarding transportation, forwarding expenses in accordance with the Circulars of the Government of India, but the claims of the petitioner to the extent claimed were not accepted. Hence this Special Civil Application.

3. The claim is based only on the ground that both, Adalaj and Tragad depots of respondent No.1 as well as the despatch rail-head, Khodiyar, are more than 14 kms. from the destination rail-head of the petitioner at Kankaria/Asarwa. There is no justifiable reason for the respondents not to entertain and pass the claim of petitioner as admissible under the Circular dated 11th December 1979. The petitioner's claim was rejected under the letter dated 24th April 1981, which is also a non speaking order.

4. The learned counsel for the petitioner contended that Khodiyar is the railway station where loading and unloading facility is available and as such, it should have been taken to be despatch rail-head for the purpose of considering the claim of the petitioner for reimbursement of transport expenses pertaining to supplies from Adalaj & Tragad depots. It has next been contended that in the case of four other parties of Baroda, Godhra, Dahod, Khodiyar was taken to be despatch rail-head for the purpose of determination of reimbursement of the claim of those parties of transportation and other charges. In para-9 of the Special Civil Application the petitioner has given out the names of those persons. So, the learned counsel for the petitioner contended that it is a case of hostile discrimination.

5. On the other hand, the learned counsel for respondents, Shri D.M. Thakkar contended this writ petition is wholly misconceived. The claim of the petitioner for reimbursement on notional basis has been considered in accordance with Circular dated 11th December 1979 and whatever entitlement of the petitioner was there, has been given to it. Shri D.M. Thakkar then contended that Khodiyar has never been used as rail-head by respondent. The Station master at Khodiyar under its letter dated 5th January 1982, informed the respondents that the capacity of goods shed for Broad Gauge is 4

(four wheeled) wagons and for the Meter Gauge wagons, no siding is there for loading. Replying to the contention of discrimination, the learned counsel for respondents contended that Khodiyar was treated as rail-head for Baroda Godhra & Dahod, in past but that has been done by mistake which has been rectified.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. From the letter of Station Master, Khodiyar, Western Railway, annexure - I at page No.58, enclosed to the reply of respondents, it is clear that capacity of goods shed for Broad Gauge is four and for Meter Gauge wagons no siding is there for loading. It has further been mentioned in the letter that so far as loading of food grains from Khodiyar in wagons loading is concerned, not even a single wagon is loaded from here upto date. This letter is of January 1982. Reference may have to another letter of Station Master, Khodiyar, Western Railway dated 1.6.82 from which it transpires that IFFCO, Kalol, is loading its consignment from their own siding served by KHD station. There is no independent loading of IFFCO from Khodiyar Broad Gauge or Meter Gauge. This letter has been sent by Station Master in reference to the letter of respondent, District Manager, of Food Corporation of India, dated 1st June 1982.

8. The learned counsel for the petitioner had referred to certain documents filed alongwith the reply and contended that loading and unloading facilities are available at Khodiyar. It is not in dispute that loading and unloading facility is available for Broad Gauge, but from the letter of railway authority, it is clear that such facility is only available for four wheeled wagons for Broad Gauge and it is not the case of the petitioner that this facility which is available is sufficient for requirement of the respondent-Corporation. So the claim of the petitioner based on the ground that rail-head was available at Khodiyar is difficult to be accepted in presence of the documents produced by respondent alongwith reply. Khodiyar was never used by respondent-Corporation for loading and unloading of wheat. The petitioner preferred lifting of quota of wheat from Sabarmati depot and as such 50% of the quota of wheat was permitted to be lifted from Sabarmati depot and rest of the quota was delivered to it from Adalaj and Tragad stations. That has been done because of non availability of stock. The learned counsel for the respondents contended that due to non availability of quota of wheat, delivery was given from Adalaj and Tragad

as the petitioner was urgently requiring the wheat and he did not want to wait till sufficient quantity of wheat is available at Sabarmati.

9. In the reply to Special Civil Application, the respondent has admitted that Adalaj is not a rail-head. It has also been admitted that Khodiyar railway station is near to Adalaj, but it is stated that Khodiyar was never used as rail-head by Food Corporation of India as the facilities of loading and unloading were not available at Khodiyar and the Food Corporation of India used Sabarmati siding, Asarwa and Kankaria rail-heads for receipt and despatch of stock as there is a general agreement with Railway Board that Food Corporation of India movement shall be in Rake-loads and such facilities do not exist at Khodiyar. It is also an admitted case that Adalaj and Tragad are 16 and 15 kms. respectively from the flour mill of the petitioner. The petitioners are therefore entitled to reimbursement of transportation charges for a distance of actual difference beyond 14 kms. by road as per the Circular dated 7.6.78. In the absence of any proof and in the absence of pleadings of petitioner that Khodiyar was ever used for loading and unloading of the stocks by respondent, the case with which the petitioner has come up before this Court cannot be accepted.

10. Now I may advert to another ground of challenge, i.e. the ground of discrimination. In the reply, the respondents have given out that in the cases of mills situated at Baroda, Godhra and Dahod, Khodiyar is taken as rail-head and these millers are paid forwarding charges for 6 kms. apart from rail freight. If Khodiyar is not taken as rail-head in case of these mills they would be entitled to forwarding charges upto Sabarmati Railway siding which would be about 14 kms. from Adalaj or Tragad and Government would be put to loss. In the reply affidavit dated 19th July 1982, it has been stated that Khodiyar was treated as rail-head for Baroda, Godhra and Dahod in the past by mistake which has been rectified. This mistake is stated to be occurred because if Khodiyar was not treated as rail-head for them, they were entitled to forwarding charges upto Sabarmati railway siding, which could be about 14 kms. from Adalaj and Tragad and the Government would have been put to loss. It is further stated that on proper verification, it is not decided not to treat Khodiyar as rail link for them also. In the case of mill owners of Baroda, Godhra and Dahod, Khodiyar was taken to be rail-head by respondent to pay less amount to the mill owners and this mistake has been committed by them in the interest of

Government. It is not in dispute that Khodiyar was taken as rail-head for determination of charges notionally. It is a case of mistake which has been rectified and it is not the case of petitioners that in future also Khodiyar was to be rail-head for those persons. It is a case where by this mistake, the Government has been benefitted and for the Government benefit, it has been done. The grievance, in these circumstances, would have been of those mill owners and not of the petitioner. It is a settled law that plea of discrimination on the basis of unwarranted order of the authority is not sustainable. It is apparently a case of mistake and the petitioner cannot be given benefit on the basis of the same and in the facts discussed above, the plea of discrimination is not sustainable. Reference in this respect may have to the decision of Apex Court in the case of Chandigarh Administration & Anr. v. Jagjit Singh & Anr., reported in AIR 1995 SC 705, and in the case of The Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain etc., reported in JT 1996(8) SC 387.

11. Taking into consideration the totality of the facts of the case, I do not find any substance in this Special Civil Application. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Ad-interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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